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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 688

A. M. MEAD, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 17-22) is unreported. The opinion of the Circuit Court of Appeals (R. 61-63) is reported in 131 F. 2d 323.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 7, 1942 (R. 63), and the petition for a writ of certiorari was filed on January 30, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTION PRESENTED

The taxpayer purported to make a gift to his wife of one-half of the assets of a real estate and insurance business which had formerly been conducted by a corporation of which he owned all but two shares of stock. Although the taxpayer and his wife agreed to conduct the business as a partnership, the taxpayer continued to conduct the business and to give funds to his wife for household expenses just as he had done before the organization of the partnership.

The question presented is whether all the profits of the business are taxable to the taxpayer.

STATUTES INVOLVED

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

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SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

SEC. 182. TAX OF PARTNERS.

There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year.

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).

Section 22 (a) is identical with Section 22 (a) of the Revenue Act of 1936, *supra,* and Section 181 is identical with Section 181 of the Revenue Act of 1936, *supra.*

STATEMENT

This case involves deficiencies in income taxes for the years 1937, 1938, and 1939 in the respective amounts of $476.53, $709.11, and $609.70 (R. 22).

The facts found by the Board of Tax Appeals may be summarized as follows:

The taxpayer has for a number of years been engaged in the real estate and fire and casualty insurance business in Montgomery, Alabama (R. 17). His business was carried on prior to December 1936, through an Alabama corporation, Mead & Charles, Inc., of which the taxpayer owned 28 shares of stock, his wife, Bessie M. Mead, owned one, and one T. T. Charles owned the remaining share. The taxpayer was the president and active manager of the corporation and received a salary in 1936 of $10,800. During the same year Mrs. Mead was secretary and treasurer of the corporation but she performed no services and received no compensation. (R. 18.)

On December 18, 1936, the stockholders and directors of Mead & Charles, Inc., voted to dissolve the corporation as of December 31, 1936, and the taxpayer purchased from T. T. Charles his interest in the corporation. On the same day the taxpayer executed a document purporting to give his wife a one-half interest in the corporate assets. A gift tax return was filed reporting this gift.[1] (R. 18.)

On December 31, 1936, the corporation was dissolved and the taxpayer and his wife executed a partnership agreement whereby they constituted themselves equal partners in the business previ-

[1] The Board of Tax Appeals made no finding upon the point but the record is clear that no gift tax was paid, the amount of the gift being less than the specific exemption (R. 37).

ously conducted by the corporation (R. 18–19). Paragraph 3 of the agreement provides as follows (R. 19):

> The active management of the partnership business shall be vested in A. M. Mead who shall have unlimited authority to conduct the business of the partnership, sign all contracts, conveyances, mortgages, notes, checks and any other instruments he may see fit to execute on behalf of the partnership and he is also authorized to make any oral arrangements on behalf of the partnership which he may see fit to make, all without limitation.

The taxpayer had a withdrawal account on the books of the partnership for 1937, 1938, and 1939. In 1937 the net income of the business was \$10,504.21 and the taxpayer withdrew \$9,771.61. Mrs. Mead had no drawing account for these years. Of the amount drawn by the taxpayer in 1937, \$3,000 was deposited in Mrs. Mead's checking account. In 1938 the business had a net income of \$13,485.60. The records show that the taxpayer drew \$12,707.04, of which approximately \$3,000 was deposited in Mrs. Mead's checking account. After the formation of the partnership, Mrs. Mead continued to receive such monies for household and personal expenses as she had received before the formation of the partnership. (R. 19–20.) She took no active part in the business but was advised by her husband concerning

any major changes contemplated or undertaken (R. 20).

More than one-half of the income of the business was derived from writing fire and casualty insurance. Renewal records, which disclosed the expiration date of the various insurance policies, were kept in the business. These records enabled the office to rewrite the insurance upon the expiration of the existing policy. Renewal policies were issued and delivered to the insured shortly before the expiration of his old policy, and in most instances the renewal policy would be accepted by the insured. These renewal records were valuable and the taxpayer had occasionally bought the renewal records of other agencies. The selling agency invariably agreed not to reenter the insurance business in the community. (R. 20.)

In his 1937, 1938 and 1939 income tax returns the taxpayer reported as his income one-half the profits of the business conducted under the name of Mead & Charles. The Commissioner determined that all the income derived from the business should be included in the taxpayer's taxable income. (R. 7, 9–13.) The Board of Tax Appeals found that a bona fide partnership did not exist between the taxpayer and his wife in the conduct of the firm of Mead & Charles during the years in question (R. 20). The Circuit Court of Appeals affirmed the Board decision (R. 61–63).

ARGUMENT

The Board's finding that Mrs. Mead contributed neither capital (R. 21) nor services to the business and received from her husband only so much of the profits as was necessary for personal and household needs (R. 19–20) is supported by the evidence and justifies the Board's characterization of this partnership as "a convenient arrangement between petitioner and his wife to reduce their taxes" (R. 20). The arrangement clearly amounted to nothing more than the type of anticipatory assignment of income which has been repeatedly held ineffective to relieve the assignor of tax liability. *Harrison* v. *Schaffner,* 312 U. S. 579; *Helvering* v. *Eubank,* 311 U. S. 122; *Helvering* v. *Horst,* 311 U. S. 112; *Lucas* v. *Earl,* 281 U. S. 111. The form of such arrangements and their validity and nomenclature under state laws are immaterial in the determination of the incidence of federal taxes which is governed by federal law. Cf. *Morgan* v. *Commissioner,* 309 U. S. 78; *Higgins* v. *Smith,* 308 U. S. 473; *Gregory* v. *Helvering,* 293 U. S. 465.

The decision below is in accord with numerous decisions applying the foregoing principles to family partnerships where the parties were not conducting a true joint enterprise. See, e. g., *Earp* v. *Jones,* 131 F. 2d 292 (C. C. A. 10th), certiorari denied, February 15, 1943; *Waldburger* v. *Helvering,* 131 F. 2d 598 (C. C. A. 2d); *Tinkoff*

v. *Commissioner,* 120 F. 2d 564 (C. C. A. 7th); *Covington* v. *Commissioner,* 103 F. 2d 201 (C. C. A. 5th); *Wickham* v. *Commissioner,* 65 F. 2d 527 (C. C. A. 8th); *Kasch* v. *Commissioner,* 63 F. 2d 466 (C. C. A. 5th), certiorari denied, 290 U. S. 644; *Cohan* v. *Commissioner,* 39 F. 2d 540 (C. C. A. 2d); cf. *Burnet* v. *Leininger,* 285 U. S. 136. This Court refused to review the issue less than a month ago in *Earp* v. *Jones,* No. 648, and there is no additional reason for review here.

CONCLUSION

The decision below is correct. There is no conflict. It is, therefore, respectfully submitted that the petition should be denied.

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